

PEGGY H. SHULTZ
Claimant

DILLON COMPANIES, INC.
Respondent
Self-Insured

WORKERS COMPENSATION FUND

ORDER

APPEARANCES

RECORD & STIPULATIONS

ISSUES

The Special Administrative Law Judge awarded claimant permanent partial disability benefits based upon a twenty-six percent (26%) work disability and assessed fifty percent (50%) of the liability to the Workers Compensation Fund. The respondent requested this review and contends claimant is not entitled to benefits for the alleged accident because

she did not prove her functional impairment increased through her last day worked and that any award should be assessed entirely against the Workers Compensation Fund.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The Award of the Special Administrative Law Judge should be affirmed. The Appeals Board agrees with the Judge's analysis and conclusions, and adopts the Judge's decision as its own.

The Appeals Board finds claimant sustained injury through her last day of work on April 6, 1993. The evidence is uncontroverted that claimant developed metatarsalgia after she returned to work in February, 1993. Respondent's argument that claimant should be denied benefits because her functional impairment is the same now as it was before her surgeries is without merit. The treating physician testified claimant had a thirteen percent (13%) functional impairment rating before her surgeries. Claimant returned to work after her surgeries and developed an entirely new injury, metatarsalgia, which now prevents her from returning to work in her former position. It is a combination of both conditions, the bilateral neuroma and the metatarsalgia, that presently comprise the thirteen percent (13%) functional impairment rating and prevents claimant's return to work.

The Workers Compensation Fund argued that it should be relieved entirely of liability because the respondent did not have knowledge that claimant had an impairment that constituted a handicap. The Appeals Board disagrees. The Appeals Board finds that claimant had significant difficulties walking before her surgeries in July and December, 1992 and, according to claimant, her manager and assistant manager were aware that she was constantly limping while at work for approximately six (6) months before her first surgery. When she returned to work in February, 1993, after recuperating from her surgeries, claimant continued to have difficulty walking and standing.

Due to the extraordinary long-standing nature and development of claimant's bilateral foot injuries over a period of some nine (9) years, coupled with the fact that both the bilateral neuroma and metatarsalgia contribute to claimant's ultimate functional impairment and disability, the Appeals Board finds it is equitable and justified to evenly divide liability between the respondent and Workers Compensation Fund. See K.S.A. 44-567.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge William F. Morrissey entered in this proceeding on June 15, 1995, should be, and hereby is, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of December 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Beth R. Foerster, Topeka, Kansas
John F. Hayes, Hutchinson, Kansas
Anthony D. Clum, Topeka, Kansas
William F. Morrissey, Special Administrative Law Judge
Philip S. Harness, Director